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# Transcript of Leigh Rothschild

**Date:** December 22, 2022

**Case:** Digital Verification Systems, LLC -v- Encyro, Inc.

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Transcript of Leigh Rothschild  
December 22, 2022

1 (1 to 4)

1	1	3
1	IN THE UNITED STATES DISTRICT COURT	1
2	FOR THE CENTRAL DISTRICT OF CALIFORNIA	2
3	DIGITAL VERIFICATION SYSTEMS,	3
4	LLC,	4
5	Plaintiff,	5
6	v.	6
7	ENCYRO, INC.,	7
8	Defendant.	8
9	-----	9
10	D E P O S I T I O N	10
11	o f	11
12	LEIGH ROTHSCHILD,	12
13	taken on behalf of Defendant	13
14	DATE: December 22, 2022	14
15	TIME: 4:03 p.m. to 5:02 p.m. EDT	15
16	PLACE: - REMOTE -	16
17	BEFORE: Dawn A. Hillier, RMR, CRR	17
18	Stenographic Reporter	18
19	Notary Public - State of	19
20	Maryland, at Large	20
21	JOB NO: 475803	21
22		22
23		23
24		24
25		25
2	2	4
1	APPEARANCES: ALL PARTIES ATTENDING REMOTELY	1
2		2
3	ON BEHALF OF PLAINTIFF:	3
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17	ALSO PRESENT:	17
18	James Hughes	18
19	Shegaw Mekonen, Planet Depos technician	19
20		20
21		21
22		22
23		23
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16	-- At end of question or answer references	16
17	interruption.	17
18	... References a trail-off by the speaker.	18
19	No testimony omitted.	19
20	"Uh-huh" "Um-hum" References affirmative sound.	20
21	"Huh-uh" "Um-um" References negative sound.	21
22		22
23		23
24		24
25		25
1	LEIGH ROTHSCHILD,	1
2	was called as a witness and, having first been duly	2
3	sworn, was examined and testified as follows:	3
4	THE WITNESS: Yes, I do.	4
5	STENOGRAPHIC REPORTER: Thank you.	5
6	MR. PALAVAN: All right. Before we get	6
7	started, I just want to put on the record that we	7
8	do have a hard stop at 5:00 Eastern time for	8
9	Mr. Rothschild. He has other commitments.	9
10	But with that said, I will turn it to defense	10
11	counsel to begin.	11
12	MS. LAMKIN: I just want to state for the	12
13	record, we were not informed that Mr. Rothschild	13
14	was granting a mere one-hour deposition for his	14
15	late-filed declaration.	15
16	Is that true, Mr. Palavan, that you did not	16
17	inform me that Mr. Rothschild would only be sitting	17
18	for an hour?	18
19	MR. PALAVAN: If I did not, that's correct.	19
20	MS. LAMKIN: You did not.	20
21	MR. PALAVAN: Okay. I can't argue with your	21
22	assertions, but yes.	22
23	THE WITNESS: For the record, I informed	23
24	Mr. Palavan numerous times, both in writing and	24
25	orally.	25

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<p>5</p> <p>1 MR. PALAVAN: Correct.</p> <p>2 MS. LAMKIN: Okay. I just -- I want you to</p> <p>3 understand the gravity of this, Mr. Rothschild.</p> <p>4 Your declaration was not properly disclosed. Just</p> <p>5 a minute. I can't see you. Let me get...</p> <p>6 Your declaration was not properly disclosed</p> <p>7 under the scheduling order, and, therefore, I</p> <p>8 offered them a choice, your counsel a choice,</p> <p>9 either withdraw your declaration or offer you for</p> <p>10 deposition, so that we could ameliorate the</p> <p>11 prejudice my client is suffering because we had no</p> <p>12 knowledge, under the court's scheduling order, that</p> <p>13 you would be submitting a declaration.</p> <p>14 Your counsel, a mere two days ago, offered you</p> <p>15 up for deposition, questions about your 18-page</p> <p>16 declaration, because, again, it was not disclosed.</p> <p>17 I just want you to understand, Mr. Rothschild,</p> <p>18 that if you end this deposition before I'm allowed</p> <p>19 to fully depose you as to the contents of your</p> <p>20 late-filed declaration, that it will be excluded</p> <p>21 under the local rules and under the court's</p> <p>22 scheduling order.</p> <p>23 So this is completely your decision,</p> <p>24 Mr. Rothschild. If you choose to end the</p> <p>25 deposition in an hour, and now 54 minutes, it's</p>	<p>7</p> <p>1 that is what you -- if that is what is allowed by</p> <p>2 the court, or the rules, or the rules. So I would</p> <p>3 make additional time available. So let's make that</p> <p>4 clear.</p> <p>5 MS. LAMKIN: Mr. Rothschild, there is no more</p> <p>6 time because our responsive claim construction</p> <p>7 brief is due tomorrow.</p> <p>8 Nonetheless, I have advised you of the</p> <p>9 potential outcome for your cutting off the</p> <p>10 deposition before I'm actually able to question you</p> <p>11 about the contents of your declaration.</p> <p>12 Now, let's get to the contents of your</p> <p>13 declaration.</p> <p>14 EXAMINATION</p> <p>15 (Exhibit 1 was marked.)</p> <p>16 BY MS. LAMKIN:</p> <p>17 Q I have marked as Exhibit 1 -- you've only</p> <p>18 given me now 50 minutes, Mr. Rothschild, so let me</p> <p>19 proceed. I have marked as Exhibit 1 a document, docket</p> <p>20 31-4, the Declaration of Leigh Rothschild in Support of</p> <p>21 Plaintiff's Opening Claim Construction Brief.</p> <p>22 Can you please reference Exhibit 1,</p> <p>23 Mr. Rothschild?</p> <p>24 A I have the declaration printed out in front of</p> <p>25 me, Ms. Lamkin.</p>
<p>6</p> <p>1 highly likely the court will exclude your</p> <p>2 deposition -- your declaration.</p> <p>3 Do you understand that?</p> <p>4 THE WITNESS: I understand, Ms. Lamkin, that</p> <p>5 you're not a judge, you're not a federal judge,</p> <p>6 you're an attorney for the other side. Your</p> <p>7 statements are taken, not necessarily -- not</p> <p>8 necessarily correct. I rely on my counsel. I</p> <p>9 don't know anything about exclusion or what the</p> <p>10 court will do. Your statements are conjecture, it</p> <p>11 seems to me, at this time.</p> <p>12 I did inform counsel, both orally and in</p> <p>13 writing, that I would be available only for an hour</p> <p>14 for this -- for this deposition. I'd be more than</p> <p>15 happy to reschedule and give you additional time,</p> <p>16 if that's what the court provides.</p> <p>17 If you're allowed to have additional time, I</p> <p>18 want to state on the record that there would be</p> <p>19 additional time made before the hearing, which I</p> <p>20 believe is in January.</p> <p>21 So I don't know anything about exclusion, and</p> <p>22 your statements do not seem to be correct to me.</p> <p>23 But I'm not a judge, nor are you. So I just want</p> <p>24 to state again, for the record, for the record,</p> <p>25 that I'm more than happy to be deposed again if</p>	<p>8</p> <p>1 Q Okay. Do you recognize this document,</p> <p>2 Mr. Rothschild?</p> <p>3 A I do. But Exhibit 1 is not shown -- for the</p> <p>4 record, Ms. Lamkin, Exhibit 1 is not being shown on the</p> <p>5 screen. So I only have a document in front of me that's</p> <p>6 not marked Exhibit 1, but I printed it before the</p> <p>7 deposition, that's marked as my declaration. But</p> <p>8 there's no documents on the screen, as well as reported</p> <p>9 that there would be -- I thought it was reported that</p> <p>10 there would be before the -- okay. So now the document</p> <p>11 is on the screen.</p> <p>12 So please don't ask me, Ms. Lamkin, about</p> <p>13 documents that are not on the screen, to reference them.</p> <p>14 I will point out when they're not.</p> <p>15 Q Mr. Rothschild, as with standard practice, and</p> <p>16 as we did last time in the deposition, the exhibits were</p> <p>17 placed in the Chat. It is in your Chat on your Zoom.</p> <p>18 Now, again, please do not be argumentative on</p> <p>19 the record. I have limited time.</p> <p>20 Do you recognize the document marked as</p> <p>21 Exhibit 1?</p> <p>22 A I do.</p> <p>23 Q What is it?</p> <p>24 A And for the record, I'm not being</p> <p>25 argumentative. That's your opinion, not mine.</p>

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<p style="text-align: right;">9</p> <p>1 <b>It is, as it states, the Declaration of Leigh</b>  2 <b>Rothschild in Support of the Plaintiff's Opening Claim</b>  3 <b>Construction Brief.</b>  4 Q Okay. Would you please look at paragraph one?  5 I'll read the line into the record. It says [as read]:  6 I make this declaration based upon my personal  7 knowledge.  8 Do you see that statement, Mr. Rothschild?  9 <b>A I do.</b>  10 Q What does that mean?  11 <b>A I make this declaration based on my</b>  12 <b>personal -- it means what it says, Ms. Lamkin.</b>  13 Q Do you have an understanding of what that  14 means, Mr. Rothschild?  15 <b>A Yes, ma'am. It means what it says.</b>  16 Q That the facts stated in your declaration are  17 facts that you've personally verified? Do you  18 understand that?  19 <b>A It means what it says, Ms. Lamkin.</b>  20 Q I'm going to give you one last opportunity to  21 answer the question that I'm asking. What is your  22 understanding of the meaning of that statement, "I make  23 this declaration based on my personal knowledge"?  24 <b>A It means, and I quote, "I make this</b>  25 <b>declaration based on my personal knowledge, and, if</b></p>	<p style="text-align: right;">11</p> <p>1 <b>have a lag in the documents on the screen versus your</b>  2 <b>statements.</b>  3 Q Mr. Rothschild, to save time, I was just  4 reading into the record. There's no document on the  5 screen. I'll now offer it. I'm offering as Exhibit 2  6 patent number 9,054,860.  7 MS. LAMKIN: If the technician could please  8 turn Exhibit 2 to the first page after the figures.  9 That would be page 11, please. Thank you.  10 (Exhibit 2 was marked.)  11 BY MS. LAMKIN:  12 Q So, Mr. Rothschild, you see where it says  13 field of invention, Column 1, line six?  14 <b>A I'm looking, Ms. Lamkin.</b>  15 <b>I see field of invention. Line six. Could</b>  16 <b>you give me the first word of that sentence, please?</b>  17 Q "The present specification."  18 <b>A Yes. I see it now.</b>  19 Q Okay. What is your experience -- or what was  20 your experience in the field of invention in 2008?  21 <b>A In 2008, I was an inventor of various patents,</b>  22 <b>also a technical advisor to various entities.</b>  23 Q I'm asking specifically about the field of  24 invention for this patent, the patent-in-suit. As to  25 the specific field of invention for the '860 patent,</p>
<p style="text-align: right;">10</p> <p>1 <b>called to testify to the truth of the matters set forth</b>  2 <b>herein, could and do so competently."</b>  3 Q If you could please turn to paragraph three in  4 Exhibit 1. I'll read it into the record.  5 "I understand that Plaintiff contends that, at  6 least at the time of the filing and prosecution of the  7 '860 patent, a POSITA of the subject matter claimed by  8 the Patent-in-Suit is a person having a bachelor's  9 degree in computer science or electrical engineering."  10 Mr. Rothschild, do you have a bachelor's  11 degree in computer science or electrical engineering?  12 <b>A I do not.</b>  13 Q Okay. I'm going to read into the record the  14 field of invention in the '860 patent. I am reading  15 from the '860 patent, Column 1, line six, Field of the  16 Invention. It says, "The present specification is  17 generally directed to a digital verified identification  18 system and method having at least one digital  19 identification module structured to be embedded or  20 otherwise disposed within one or more electronic files."  21 Mr. Rothschild, what was your experience in  22 the field of invention at the time of invention, 2008?  23 <b>A Ms. Lamkin, the part you quoted was not on the</b>  24 <b>screen, one more time. The document you're referencing</b>  25 <b>is not in front of me, nor on the screen. We seem to</b></p>	<p style="text-align: right;">12</p> <p>1 what was your experience in 2008?  2 <b>A I had knowledge of the art.</b>  3 Q Please explain that in depth.  4 <b>A I had knowledge of the art. That's my</b>  5 <b>explanation. I had knowledge of the art.</b>  6 Q What knowledge of the art did you have, sir?  7 <b>A Knowledge of the way digital verification</b>  8 <b>works.</b>  9 Q How did you obtain that knowledge?  10 <b>A By research.</b>  11 Q Can you please expand on that?  12 <b>A No, I can't. It's many years ago. I cannot</b>  13 <b>expand on it. I had knowledge of the art. I had been,</b>  14 <b>previously, a prolific and accomplished inventor. I had</b>  15 <b>represented and given technical support to various</b>  16 <b>entities, and I had knowledge of this art.</b>  17 Q At this time, sitting in this deposition, you  18 cannot recall the specifics of your experience in the  19 field of the art for the '860 patent?  20 <b>A I cannot recall it with specificity.</b>  21 Q Okay. Thank you, Mr. Rothschild.  22 Mr. Rothschild, if you could please, turning  23 back to Exhibit 1.  24 <b>A The document is lagging behind one more time,</b>  25 <b>Ms. Lamkin.</b></p>

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<p>13</p> <p>1 Q Give him a moment, Mr. Rothschild. The</p> <p>2 technician has to move to Exhibit 1.</p> <p>3 A Ms. Lamkin, you need to give him a moment as</p> <p>4 you ask the questions.</p> <p>5 Q If you could please look at paragraph five,</p> <p>6 Mr. Rothschild.</p> <p>7 A It's now on the screen, Ms. Lamkin.</p> <p>8 Q Do you see in paragraph five where you quote</p> <p>9 the prosecution history of the '860 patent?</p> <p>10 A Yes, ma'am.</p> <p>11 Q Okay. Did you review personally the</p> <p>12 prosecution history of the '860 patent as part of</p> <p>13 drafting this declaration?</p> <p>14 A I'll have to read paragraph five.</p> <p>15 I had previously reviewed. To answer your</p> <p>16 question, yes.</p> <p>17 Q Yes, you reviewed the prosecution history of</p> <p>18 the '860 patent as part of drafting your declaration</p> <p>19 that is Exhibit 1?</p> <p>20 A I had reviewed it previously.</p> <p>21 Q So the discussion of the prosecution history</p> <p>22 in your declaration is from memory?</p> <p>23 A I don't understand the question.</p> <p>24 Q Did you review the prosecution history of the</p> <p>25 '860 patent while drafting your declaration?</p>	<p>15</p> <p>1 non-provisional utility patent application transmittal</p> <p>2 letter.</p> <p>3 If you scroll down, if the document person</p> <p>4 could scroll down for me, please.</p> <p>5 Signed by James Wetterling and Jennie Malloy,</p> <p>6 or one of the two attorneys, for the applicant.</p> <p>7 MS. LAMKIN: If you could ask the technician</p> <p>8 to please turn to page 42. That's 42 on the pdf.</p> <p>9 Thank you.</p> <p>10 BY MS. LAMKIN:</p> <p>11 Q Mr. Rothschild, is that your signature on --</p> <p>12 A It is.</p> <p>13 Q Just a moment, please.</p> <p>14 Mr. Rothschild, is that your signature on page</p> <p>15 42 of Exhibit 3?</p> <p>16 A It is.</p> <p>17 Q Okay. Do you see above your signature where</p> <p>18 it says [as read]: I hereby declare that all statements</p> <p>19 made herein of my knowledge are true and that all</p> <p>20 statements made of information and belief are believed</p> <p>21 to be true?</p> <p>22 Do you see that, sir?</p> <p>23 A I do.</p> <p>24 Q Is this the kind of declaration that you</p> <p>25 submit in the prosecution history of a patent?</p>
<p>14</p> <p>1 A I had reviewed it previously, as I just</p> <p>2 testified.</p> <p>3 Q When did you review the prosecution history</p> <p>4 previously?</p> <p>5 A I don't remember with specificity.</p> <p>6 Q Was it within a year?</p> <p>7 A I don't remember with specificity.</p> <p>8 Q It could be more than a year prior?</p> <p>9 A I don't remember with specificity.</p> <p>10 MS. LAMKIN: I'm going to mark as Exhibit 3 a</p> <p>11 document bearing Bates range DVSENC_17 to 61.</p> <p>12 (Exhibit 3 was marked.)</p> <p>13 BY MS. LAMKIN:</p> <p>14 Q Mr. Rothschild, have you seen Exhibit 3</p> <p>15 before?</p> <p>16 A I need time to look at it. It just appeared</p> <p>17 on the screen, Ms. Lamkin.</p> <p>18 I don't really know if I've seen this with</p> <p>19 specificity. I don't remember.</p> <p>20 Q You don't remember if you've seen Exhibit 3?</p> <p>21 A Do not.</p> <p>22 Q Okay. Do you generally recognize the document</p> <p>23 as a prosecution history document?</p> <p>24 A I don't identify it any way except the</p> <p>25 document that's on the screen. As it states, it is a</p>	<p>16</p> <p>1 A I don't quite understand the question.</p> <p>2 Q Do you --</p> <p>3 A Let me -- sorry. If I could finish.</p> <p>4 I'm not a patent attorney, nor an attorney,</p> <p>5 Ms. Lamkin, so I don't understand what your question is.</p> <p>6 If you're asking me for a legal opinion, I would defer</p> <p>7 to counsel, to patent counsel.</p> <p>8 Q Do you recognize this document,</p> <p>9 Mr. Rothschild?</p> <p>10 A I see it now. I see it with my signature.</p> <p>11 Q The question was: Do you recognize this</p> <p>12 document, Mr. Rothschild?</p> <p>13 A I recognize it as a document that I signed,</p> <p>14 Ms. Lamkin.</p> <p>15 Q Okay. In general, do you make an effort to</p> <p>16 make truthful statements to the USPTO during the</p> <p>17 prosecution of your patents?</p> <p>18 A Absolutely and unequivocally.</p> <p>19 MS. LAMKIN: I'm going to mark as Exhibit 4 a</p> <p>20 document bearing Bates range DVSENC_166 to 191.</p> <p>21 (Exhibit 4 was marked.)</p> <p>22 BY MS. LAMKIN:</p> <p>23 Q Do you recognize this document,</p> <p>24 Mr. Rothschild?</p> <p>25 A I see a document on the screen.</p>

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<p>17</p> <p>1 Q Sir, my question is: Do you recognize the</p> <p>2 document?</p> <p>3 A <b>Not with specificity.</b></p> <p>4 Q Okay. Do you see the application number</p> <p>5 12/006,457?</p> <p>6 A <b>Yes, I do.</b></p> <p>7 MS. LAMKIN: Okay. If we could please pull up</p> <p>8 Exhibit 2, which is the '860 patent, the first</p> <p>9 page?</p> <p>10 BY MS. LAMKIN:</p> <p>11 Q Do you see the application number here,</p> <p>12 Mr. Rothschild, 12/006,457?</p> <p>13 A <b>I do.</b></p> <p>14 Q Do you see that the application number on the</p> <p>15 face of the asserted '860 patent is the same as the</p> <p>16 application number on Exhibit 4?</p> <p>17 A <b>I'd have to go back to Exhibit 4, wouldn't I?</b></p> <p>18 MS. LAMKIN: If we could please go back.</p> <p>19 THE WITNESS: I do.</p> <p>20 MS. LAMKIN: Thank you.</p> <p>21 BY MS. LAMKIN:</p> <p>22 Q So that's the same application -- Exhibit 4 is</p> <p>23 the same application number as the asserted '860 patent?</p> <p>24 A <b>It appears to be.</b></p> <p>25 MS. LAMKIN: Okay. If we could please turn to</p>	<p>19</p> <p>1 I'm going to read the language starting "Therefore,</p> <p>2 properly construed."</p> <p>3 A <b>Ms. Lamkin, I'll need to see the full page</b></p> <p>4 <b>number. I have no idea what page you're on. The</b></p> <p>5 <b>document's not showing it in the entirety, for the</b></p> <p>6 <b>record.</b></p> <p>7 Q It is, sir. It is showing in its entirety.</p> <p>8 A <b>I don't see a page number, for the record,</b></p> <p>9 <b>Ms. Lamkin.</b></p> <p>10 Q The technician is circling the page number for</p> <p>11 you on the screen.</p> <p>12 A <b>I can't see that.</b></p> <p>13 <b>Okay. I see it now.</b></p> <p>14 Q Okay.</p> <p>15 A <b>It was a lag, for the record.</b></p> <p>16 Q I'm reading the last line on the first page.</p> <p>17 It says, "Therefore, properly construed, the claimed</p> <p>18 'module generating assembly' must include hardware."</p> <p>19 Do you see that line, sir?</p> <p>20 A <b>I do.</b></p> <p>21 Q Is that the truth?</p> <p>22 A <b>I don't understand the question.</b></p> <p>23 Q This was a statement submitted on your behalf</p> <p>24 to the United States Patent and Trademark Office. Is it</p> <p>25 a true statement?</p>
<p>18</p> <p>1 page 14 of the pdf on this document.</p> <p>2 Actually, for context, please, if we could</p> <p>3 return to the first page of Exhibit 4? Thank you.</p> <p>4 BY MS. LAMKIN:</p> <p>5 Q Do you see where it says, "The following</p> <p>6 Amendment and Remarks are submitted in response to the</p> <p>7 Office Action dated February 1, 2011"?</p> <p>8 Do you see that, Mr. Rothschild?</p> <p>9 A <b>I do.</b></p> <p>10 Q Do you have an understanding of what that</p> <p>11 means?</p> <p>12 A <b>I do.</b></p> <p>13 Q What does it mean?</p> <p>14 A <b>It means the following amendment and remarks</b></p> <p>15 <b>are submitted in response to the office action dated</b></p> <p>16 <b>February 1st, 2011.</b></p> <p>17 Q Do you understand that the applicant, that is</p> <p>18 you, is submitting amendment and remarks to the USPTO?</p> <p>19 A <b>Through counsel, the amendment was submitted,</b></p> <p>20 <b>I believe.</b></p> <p>21 Q So you understand that this is an amendment</p> <p>22 submitted by applicant in the prosecution history of the</p> <p>23 '860 patent; correct?</p> <p>24 A <b>I do.</b></p> <p>25 Q Okay. If we could now please turn to page 14.</p>	<p>20</p> <p>1 A <b>It is a statement that was submitted in the</b></p> <p>2 <b>application, Ms. Lamkin.</b></p> <p>3 Q Sir, my question is this: Is it a true</p> <p>4 statement?</p> <p>5 A <b>It is a statement as was submitted in the</b></p> <p>6 <b>application.</b></p> <p>7 Q Sir, it's a yes-or-no question. Is it a</p> <p>8 true --</p> <p>9 A <b>I've given you -- I've given you my answer,</b></p> <p>10 <b>Ms. Lamkin.</b></p> <p>11 Q Okay. I'll give you one more opportunity to</p> <p>12 respond to my question.</p> <p>13 A <b>It is a statement that was submitted in the</b></p> <p>14 <b>application, Ms. Lamkin. It doesn't need --</b></p> <p>15 Q Thank you, Mr. Rothschild.</p> <p>16 A <b>It doesn't -- for the record, it does not need</b></p> <p>17 <b>interpretation.</b></p> <p>18 MS. LAMKIN: If we could please return to</p> <p>19 Exhibit 1. Please go to paragraph 21.</p> <p>20 THE WITNESS: What exhibit are we on?</p> <p>21 BY MS. LAMKIN:</p> <p>22 Q Exhibit 1, page 21. This is your declaration,</p> <p>23 sir, that you submitted in this matter. Do you see</p> <p>24 paragraph 21, Mr. Rothschild?</p> <p>25 A <b>I do.</b></p>



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<p>21</p> <p>1 Q At the bottom of page 10, lines 27 to 28, you</p> <p>2 write "including that the module generating assembly may</p> <p>3 be, inter alia, a computer application or a web server</p> <p>4 running on a device."</p> <p>5 Do you see that, sir?</p> <p>6 A I do.</p> <p>7 Q Is that a true statement?</p> <p>8 A It is the statement -- it is a true statement</p> <p>9 as it is stated in the -- my declaration, as stated in</p> <p>10 my declaration.</p> <p>11 Q So in your opinion, the module generating</p> <p>12 assembly might be, inter alia, a computer application or</p> <p>13 a web server. Is that true?</p> <p>14 A It means what it says, Ms. Lamkin, that</p> <p>15 including the mobile [sic] -- and I read as follows [as</p> <p>16 read]: Including that the mobile generating assembly</p> <p>17 may be, inter alia, a computer application or a web</p> <p>18 server running on a device.</p> <p>19 Q Is that a true statement, sir?</p> <p>20 A It is a true statement.</p> <p>21 Q Thank you.</p> <p>22 Now, please turn to paragraph 22. At 22, you</p> <p>23 write [as read]: The specification is clear, at least a</p> <p>24 POSITA, that any alleged function for this term is</p> <p>25 performed by some hardware, such as a web server, file</p>	<p>23</p> <p>1 A I believe it would be the term to be construed</p> <p>2 by the court, as listed in the affidavit, which is the</p> <p>3 declaration of Leigh Rothschild in support of the</p> <p>4 Plaintiff's Opening Claim Construction Brief, as you</p> <p>5 defined it, Exhibit 1.</p> <p>6 Q I'll give you one more opportunity to answer</p> <p>7 the question, sir.</p> <p>8 In paragraph 22, when you use the phrase "for</p> <p>9 this term," which term are you referring to?</p> <p>10 A I would ask the court reporter to read back</p> <p>11 my -- that would be my answer.</p> <p>12 STENOGRAPHIC REPORTER: Counsel, do you want</p> <p>13 me to read back?</p> <p>14 MS. LAMKIN: I don't. Thank you.</p> <p>15 BY MS. LAMKIN:</p> <p>16 Q To be clear, then, in paragraphs 21 and 22,</p> <p>17 Mr. Rothschild, is it true that you are saying the</p> <p>18 module generating assembly may be a computer application</p> <p>19 or web server, a file server, or other computing device?</p> <p>20 A I know you want, Ms. Lamkin, me to answer to</p> <p>21 your questions which would call for speculation. My</p> <p>22 answer is it is what it says in the declaration. I will</p> <p>23 not speculate.</p> <p>24 Q Sir, I'm not asking you to speculate. I'm</p> <p>25 asking you to read your own sworn declaration.</p>
<p>22</p> <p>1 server, or other computing device.</p> <p>2 Do you see that, sir?</p> <p>3 A I do.</p> <p>4 Q Is that a true statement?</p> <p>5 A It is a correct statement as reported under</p> <p>6 paragraph 22 in Exhibit 1, as you defined Exhibit 1,</p> <p>7 which is, by the way, my declaration in support of the</p> <p>8 Plaintiff's Opening Claim Construction Brief.</p> <p>9 Q Is the first sentence of paragraph 22 a true</p> <p>10 statement?</p> <p>11 A It is a correct statement, Ms. Lamkin.</p> <p>12 Q And when you say "for this term," which term</p> <p>13 are you referring to?</p> <p>14 A I don't understand the question. Could you</p> <p>15 please repeat it?</p> <p>16 Q Yes.</p> <p>17 First sentence in paragraph 22, you say [as</p> <p>18 read]: The specification is clear, at least a POSITA,</p> <p>19 that any alleged function for this term is performed by</p> <p>20 hardware.</p> <p>21 When you say "this term," which term do you</p> <p>22 mean?</p> <p>23 A I believe that would be the term that's to be</p> <p>24 construed by the court.</p> <p>25 Q Which term, sir?</p>	<p>24</p> <p>1 I'm asking you, in paragraphs 21 and 22, is it</p> <p>2 your opinion that the module generating assembly might</p> <p>3 be a computer application or a web server running on a</p> <p>4 device or a file server or other computing device?</p> <p>5 A My opinion, Ms. Lamkin, is as stated in those</p> <p>6 paragraphs, which is part of the declaration of Leigh</p> <p>7 Rothschild in support of the Plaintiff's Opening Claim</p> <p>8 Construction Brief, as you defined it, Exhibit 1.</p> <p>9 Q I'll give you one more opportunity to answer</p> <p>10 the question, Mr. Rothschild.</p> <p>11 In paragraphs 21 and 22 of your sworn</p> <p>12 declaration, document number 31-4, is it your opinion</p> <p>13 that the module generating assembly may be a computer</p> <p>14 application or a web server running on a device or a</p> <p>15 file server or other computing device?</p> <p>16 A If the court reporter would like to read back</p> <p>17 my testimony, as I previously answered this question</p> <p>18 twice, that would be my answer.</p> <p>19 Q Okay. Thank you, Mr. Rothschild.</p> <p>20 If we could please turn to Exhibit 2, the</p> <p>21 asserted '860 patent.</p> <p>22 A I would like to add to that, if I would be</p> <p>23 allowed, Ms. Lamkin.</p> <p>24 Q Please.</p> <p>25 A Yes. Your question calls for speculation.</p>

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<p style="text-align: right;">25</p> <p>1 And apparently, you want me to vary from what I said in  2 the declaration. And the declaration was carefully  3 thought out by me after a lot of, you know, careful  4 thought.  5 I believe the declaration to be entirely  6 truthful and accurate, correct. And it is what it says,  7 despite your questions that are calling upon me to  8 speculate. So I would like to have that in the record.  9 MS. LAMKIN: If we could please turn to  10 Exhibit 2, the '860 patent.  11 THE WITNESS: And for the record, the exhibit  12 is not before me.  13 I see it now. There's a lag.  14 MS. LAMKIN: If the technician could please  15 turn to Column 2 of the '860 patent, right after  16 the figures.  17 BY MS. LAMKIN:  18 Q Do you see that, Mr. Rothschild?  19 A Could you ask me -- could you state what  20 you're asking me to look at, Ms. Lamkin?  21 Q If you could please turn to Column 2, lines 19  22 to 22, which I will read into the record. "In at least  23 one embodiment, however, the module generating assembly  24 is at least partially integrated within the computer  25 application, e.g., an interactive word processing</p>	<p style="text-align: right;">27</p> <p>1 that section that you're referring to, it would make it  2 much easier for me to provide additional testimony.  3 MS. LAMKIN: If we could please go to  4 Exhibit 1, paragraph 21.  5 THE WITNESS: We have a lag again.  6 BY MS. LAMKIN:  7 Q Okay. I'm referring specifically to lines 27  8 and 28, starting with "including."  9 A Give me a second to look at it, please.  10 Q Again, the language we're referring to is in  11 your declaration, page 10, lines 27 to 28, where you  12 write "including that the module generating assembly may  13 be, enter alia, a computer application or a web server  14 running on a device."  15 Do you see that, Mr. Rothschild?  16 A As highlighted, I see it.  17 Q Okay. So in your opinion, the module  18 generating assembly may be a computer application or a  19 web server returning on a device; correct?  20 A That is what it states, Ms. Lamkin.  21 Q Okay. Now, with that in mind, could we please  22 turn back to Exhibit 2, the '860 patent. In the  23 highlighted language, you write, "In at least one  24 embodiment, however, the module generating assembly is  25 at least partially integrated within the computer</p>
<p style="text-align: right;">26</p> <p>1 program"  2 Do you see that, sir?  3 A I do.  4 Q Do you have an understanding --  5 A It helps, by the way, when your document  6 person highlights for me. It makes it quicker,  7 Ms. Lamkin. Appreciate that.  8 Q Do you have an understanding of what that  9 passage means in your patent?  10 A Yes, I do.  11 Q Can you please explain it?  12 A It means that [as read]: In at least one  13 embodiment, however, the module generating assembly is  14 at least partially integrated within the computer  15 application, e.g., an interactive word processing  16 program.  17 In other words, it means what it says. It's  18 the plain and ordinary meaning, as placed in the patent  19 application.  20 Q Do you recall, in paragraph 21 of your  21 declaration, where you write that the module generating  22 assembly may be, inter alia, a computer application or a  23 web server running on a device?  24 A I would have to see that exhibit again. If  25 your document person would be so kind as to highlight</p>	<p style="text-align: right;">28</p> <p>1 application."  2 Do you see that, sir?  3 A I do.  4 Q Can you please explain how the module  5 generating assembly, as a computer application, could be  6 at least partially integrated within a computer  7 application? How do you have --  8 A Ms. Lamkin --  9 Q How do you -- sir, let me ask my question.  10 How is it possible to have a computer  11 application integrated within a computer application?  12 A First of all, it means what it says, as  13 provided in the specificity of patent number 9,054,860.  14 Now, I refer you to my declaration in  15 paragraphs 21 through 25. If one reads those  16 paragraphs, it's very clear that the construction that  17 we are asking for, in terms of means plus function, is  18 the correct instruction and not the construction, as  19 you're trying to, today, in today's deposition, to take  20 bits and pieces out of order, put them together, to come  21 up with some disjointed construction that you'll present  22 to the court, as you have in your brief, which is  23 totally erroneous, in my opinion, as I state here in my  24 declaration, which is my declaration in support of the  25 plaintiff's opening claim.</p>



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<p>29</p> <p>1 Because it is very clear, Ms. Lamkin, in</p> <p>2 paragraphs 21 through 25, if one reads those, as the</p> <p>3 court will read, as you have read, as your experts have</p> <p>4 read, it's very clear that this is not a means plus</p> <p>5 function claim, absolutely not, as we defined here, the</p> <p>6 reason that it's not. And if it was, there's function</p> <p>7 that is provided.</p> <p>8 Now, we detailed that very clearly in</p> <p>9 paragraphs 21, 22, 23, 24, and 25. And your efforts to</p> <p>10 take little pieces of little sentences and put them all</p> <p>11 together to come up with some tortured claim</p> <p>12 construction that you're trying to present to the court</p> <p>13 is totally inaccurate.</p> <p>14 And that is what my declaration states. You</p> <p>15 may want to mischaracterize my declaration, as you're</p> <p>16 doing during today's deposition, and that is not</p> <p>17 correct. That is absolutely not what we're saying.</p> <p>18 That's not what I said. It's very clear what I said in</p> <p>19 my declaration in paragraphs 21 through 25. I hope that</p> <p>20 answers your question.</p> <p>21 Q It does, Mr. Rothschild -- does not,</p> <p>22 Mr. Rothschild, but I'll give you another opportunity.</p> <p>23 Could you please explain how it's possible to</p> <p>24 have a computer application partially integrated within</p> <p>25 a computer application?</p>	<p>31</p> <p>1 same as the other two times. Your question is clearly</p> <p>2 defined by paragraphs 21 through 25, which will explain,</p> <p>3 absolutely, your question, for yourself and the court,</p> <p>4 anyone that is reading this, you know, transcript of the</p> <p>5 deposition. I'd be more than happy to read that into</p> <p>6 the record.</p> <p>7 Q In paragraph 21 of your declaration,</p> <p>8 Exhibit 1, you also say that the module generating</p> <p>9 assembly can be a web server running on a device;</p> <p>10 correct?</p> <p>11 A I would need to have that highlighted. If the</p> <p>12 document person would be kind enough to do that, I can</p> <p>13 refer to that statement -- that purported statement that</p> <p>14 you just read.</p> <p>15 Q Do you need the question again,</p> <p>16 Mr. Rothschild?</p> <p>17 A I need it highlighted. There was a lag.</p> <p>18 So could you repeat the question? I want to</p> <p>19 make sure the question matches with what I see on the</p> <p>20 screen, Ms. Lamkin. I appreciate your kindness in this</p> <p>21 regard.</p> <p>22 Q Paragraph 21 of your declaration, you also say</p> <p>23 that the module generating assembly may be a web server</p> <p>24 running on a device; correct?</p> <p>25 A And I quote from what is highlighted now by</p>
<p>30</p> <p>1 A I testified that in paragraphs 21 through 25</p> <p>2 in my declaration, that is explained. If you would like</p> <p>3 me to read paragraphs 21 through 25 into the record so</p> <p>4 that you have it before you, I'd be more than happy to</p> <p>5 do that now. Just tell me when to start, Ms. Lamkin.</p> <p>6 Q Mr. Rothschild, I'll give you one more</p> <p>7 opportunity to answer the question that I'm asking. And</p> <p>8 that is: How is it possible to have a computer</p> <p>9 application partially integrated within a computer</p> <p>10 application?</p> <p>11 A If the court reporter would choose to read</p> <p>12 back my testimony, that would be my -- on this matter,</p> <p>13 as per your question, that would be my answer, for the</p> <p>14 third time.</p> <p>15 Q You also say, in paragraph 21 --</p> <p>16 A I'm sorry to interrupt. I didn't hear an</p> <p>17 answer if the court reporter is going to read back my</p> <p>18 testimony.</p> <p>19 Q No.</p> <p>20 A Sorry.</p> <p>21 Q The court reporter is not.</p> <p>22 A Oh, okay. I just wanted to put that in the</p> <p>23 record.</p> <p>24 So my answer is the same as the other two</p> <p>25 times. I want it on the record that my answer is the</p>	<p>32</p> <p>1 the document person, [as read]: Including that the</p> <p>2 module generating assembly may be, inter alia, a</p> <p>3 computer application or a web server running on a</p> <p>4 device.</p> <p>5 Q It's a yes-or-no question, sir. In paragraph</p> <p>6 21 of your declaration, do you say that the module</p> <p>7 generating assembly may be a web server running on a</p> <p>8 device?</p> <p>9 A I see that, and that is the statement that I</p> <p>10 made, Ms. Lamkin.</p> <p>11 Q The answer is yes, sir?</p> <p>12 A The answer would be yes. That is the</p> <p>13 statement I made in the declaration, which would be, for</p> <p>14 the record, the Declaration of Leigh M. Rothschild in</p> <p>15 Support of the Plaintiff's Opening Claim Construction</p> <p>16 Brief, Exhibit 1, as you defined it.</p> <p>17 Q Okay. If we could please turn back to</p> <p>18 Exhibit 2, the same provision in Column 2. Again,</p> <p>19 Column 2 of the '860 asserted patent, it says, "In at</p> <p>20 least one embodiment, however, the module generating</p> <p>21 assembly is at least partially integrated within the</p> <p>22 computer application, e.g., an interactive word</p> <p>23 processing program."</p> <p>24 Do you see that, sir?</p> <p>25 A No, I don't. It's not highlighted by your</p>

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<p>33</p> <p>1 document person. If they could zoom, also, in on it, 2 I'd appreciate it. Is it possible? Perfect. 3 Could you repeat the question, Ms. Lamkin? 4 Q Am I accurately reading the text from Column 2 5 of the '860 patent, "In at least one embodiment, 6 however, the module generating assembly is at least 7 partially integrated within the computer application, 8 e.g., an interactive word processing program." 9 Have I accurately read your patent, sir? 10 A You accurately read that section of the 11 specification of the 9,054,860 patent, Column 2, 12 apparently line 19. 13 Q Will you please explain, sir, how a web server 14 can be at least partially integrated within a computer 15 application? 16 A It is as it says, and it has the plain and 17 ordinary meaning of the words, which are [as read]: In 18 at least one embodiment, however, the mobile generating 19 assembly is at least partially integrated within the 20 computer application, e.g., an interactive word 21 processing program. 22 Now, if you're referring to how that applies 23 to this motion that's before the court for claim 24 construction, I would refer you, again, to paragraphs 21 25 through 25, where we talk about our construction versus</p>	<p>35</p> <p>1 clearly, what should be done. 2 The claim -- we are, in my declaration, we are 3 trying to provide a full explanation to your question, 4 which is, in this case, for this particular claim 5 construction term, contained what's in Claim 21 through 6 25 -- claimed within paragraph, excuse me, 21 -- 7 correcting myself -- paragraph 21 through 25 which, if 8 understood and read, would answer your question in 9 totality. 10 Q If we could please turn to paragraph 25 of 11 Exhibit 1. 12 A Paragraph 25. 13 Q Do you see paragraph 25 highlighted, 14 Mr. Rothschild? 15 A A bit of a lag, but I now do. 16 And thank you for zooming in, to the document 17 person. Thank you. 18 Q I'm referring specifically to line 16, 19 starting with "a POSITA." I'll read it into the record. 20 [As read]: A POSITA would understand that the 21 corresponding structure for any alleged function is 22 module generating assembly 50, including as outlined in 23 Figure 7 and its corresponding description, namely '860, 24 Column 7, line 48 to Column 8, line 62. 25 Can you explain what you mean by that</p>
<p>34</p> <p>1 your construction of means plus function, where we 2 clearly show that this is a means plus function 3 absolutely -- where we clearly show the definition of 4 means plus function and explain the construction that 5 we've taken upon, that we've asserted or that we are 6 asking the court to validate, we're asking the court to 7 validate. 8 Q I'll give you one more opportunity to answer 9 the question that I've asked, sir. Can you please 10 explain how a web server running on a device can be at 11 least partially integrated within a computer 12 application? 13 A The words -- my answer is that the words are 14 clearly defined in the specificity. And then there's 15 additional support for the claim construction that we're 16 now talking about in paragraphs 21 through 25 in my 17 declaration. 18 If you would like, Ms. Lamkin, I'd be more 19 than happy to read that explanation on 21 -- excuse me, 20 those paragraphs 21 through 25 into the record, which 21 would, I believe, answer your question. 22 The question is fragmented and, therefore, 23 could be not answered in partial. Again, I believe 24 you're taking little bits and pieces and trying to come 25 up with a distorted claim construction, which is not,</p>	<p>36</p> <p>1 sentence, Mr. Rothschild? 2 A Certainly, Ms. Lamkin. 3 Right. So repeating where it says "a POSITA," 4 and I am defined as a POSITA -- right? -- a person of -- 5 right. Right. That I would understand -- right, that I 6 would understand, as POSITA, that the corresponding 7 structure for any alleged function is a module 8 generating assembly, clearly as outlined in Figure 7. 9 So we're referring you, Ms. Lamkin -- 10 referring the court, I should say, in this declaration, 11 to Exhibit [sic] 7, where we clearly, in addition to 12 Exhibit 7, with Exhibit 7 and in addition to Exhibit 7, 13 clearly show function, clearly show function as part of 14 the means plus function claim construction, which is a 15 different construction, by the way, than you're taking. 16 So we are pointing you to Exhibit 7 here as 17 one place where the court could see function in terms of 18 the claim. 19 MS. LAMKIN: Could we please turn to Figure 7 20 in the '860 patent, Exhibit 2? I'm sorry for not 21 being more clear to the technician. Exhibit 2, 22 please. Correct. Thank you. 23 And then just above -- just -- thank you very 24 much. 25 BY MS. LAMKIN:</p>


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<p>37</p> <p>1 Q Where is the module generating assembly 50 in 2 Figure 7 of the '860 patent, Mr. Rothschild?</p> <p>3 A <b>Could you repeat the question?</b></p> <p>4 Q Where is module generating assembly 50 in 5 Figure 7 of the '860 patent?</p> <p>6 A <b>Well, referring to the drawing, it is, as is 7 stated, Ms. Lamkin, it's self-evident.</b></p> <p>8 Q Your testimony, sir, is that it's self-evident 9 that module generating assembly 50 is in Figure 7?</p> <p>10 A <b>My testimony is the exhibit as -- the exhibit 11 is as it was published in my declaration, as Figure 7. 12 Nothing more, nothing less.</b></p> <p>13 Q I'll ask the question one more time, 14 Mr. Rothschild. Can you please explain where module 15 generating assembly 50 is depicted in Figure 7 of the 16 '860 patent?</p> <p>17 A <b>My answer is that Figure 7, as was reproduced 18 in my declaration, is as it stands, is as it was 19 published, and is self-explanatory.</b></p> <p>20 MS. LAMKIN: If we could please turn to 21 Exhibit 2, Column 7.</p> <p>22 BY MS. LAMKIN:</p> <p>23 Q In your declaration -- and if you need to 24 switch back, Mr. Rothschild, that's fine.</p> <p>25 In your declaration, paragraph 25, you cite --</p>	<p>39</p> <p>1 MS. LAMKIN: If we could please turn back to 2 Columns 7 and 8 in the '860 patent?</p> <p>3 BY MS. LAMKIN:</p> <p>4 Q So just by way of reminder, Mr. Rothschild, 5 you've cited Column 7, starting at line 48, to Column 8, 6 going to line 62; correct?</p> <p>7 A <b>I have not cited it, to the best of my 8 knowledge, in today's testimony. It is cited in the 9 declaration, paragraph 25, as you've defined it, 10 Exhibit 1.</b></p> <p>11 MS. LAMKIN: If we could highlight at 12 Column 7, line 60 to 66, please.</p> <p>13 BY MS. LAMKIN:</p> <p>14 Q You see that language, Mr. Rothschild?</p> <p>15 A <b>No, I don't. It's a teeny little -- it needs 16 to be zoomed by the document person.</b></p> <p>17 <b>I do see it now.</b></p> <p>18 Q That provision is within the section that 19 you've cited in your declaration -- 20 correct? -- Column 7, 48 to 8, 62?</p> <p>21 A <b>It's not fully highlighted, I would point out.</b></p> <p>22 Q I'm only asking you, sir, if the parts we have 23 highlighted, Column 7, line 60 to 66, is a subset of the 24 section that you cited in your declaration, 7, 48 to 8, 25 62.</p>
<p>38</p> <p>1 A <b>Well, the documents, Ms. Lamkin, are not -- 2 excuse me for interrupting, by the way. The document 3 you're referring to is not on the screen.</b></p> <p>4 MS. LAMKIN: Would you please turn back to 5 Exhibit 1, paragraph 25?</p> <p>6 BY MS. LAMKIN:</p> <p>7 Q Do you see in paragraph 25 where you cite 8 Column 7, line 48 to Column 8, line 62?</p> <p>9 A <b>If you could highlight just that particular 10 section, please.</b></p> <p>11 <b>I do see that.</b></p> <p>12 Q Okay. And is it your testimony that the 13 module generating assembly corresponding structure is 14 contained within Column 7, line 48 to Column 8, line 62 15 in the '860 patent?</p> <p>16 A <b>My testimony is that, as contained in my 17 declaration, paragraph 25, that the module generating 18 assembly 50, including as outlined in Figure 7, and its 19 corresponding description, namely '860/7:48-8:62, that 20 was what we put in the declaration. That is what is 21 correct.</b></p> <p>22 <b>And as I said before and testified to before, 23 Exhibit 7, in addition to additional support that we 24 provided, as the declaration clearly shows, that there 25 is functionality in terms of the claim construction.</b></p>	<p>40</p> <p>1 A <b>Could you scroll -- could you scroll the 2 patent, please? Very hard when you're not working with 3 the document in front of you, Ms. Lamkin.</b></p> <p>4 <b>I point out for the record --</b></p> <p>5 Q It's in the Chat, sir. You're welcome to 6 download it. I have provided the actual document to you 7 in the Chat, and you're more than welcome to download it 8 and hold it in your hand.</p> <p>9 A <b>Thank you for that courtesy.</b></p> <p>10 <b>Could you repeat the question?</b></p> <p>11 Q Yes. Does Column 7, line 60 to 66, fall 12 within your citation of Column 7, line 48 to Column 8, 13 line 62?</p> <p>14 A <b>With that, yes, I believe that it would be the 15 case.</b></p> <p>16 Q Okay.</p> <p>17 A <b>Yes.</b></p> <p>18 Q I'm going to read the highlighted section into 19 the record. "In addition, the module generating 20 assembly may be at least partially integrated within a 21 computer application such as an interactive word 22 processing program, as a feature, option, or plug-in for 23 example."</p> <p>24 Do you see that, Mr. Rothschild?</p> <p>25 A <b>I do.</b></p>

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<p style="text-align: right;">41</p> <p>1 Q Okay. So if the module generating assembly is</p> <p>2 a computer application, as you state in your</p> <p>3 declaration, how can a computer application be at least</p> <p>4 partially integrated within a computer application?</p> <p>5 A I believe we explained, to answer your</p> <p>6 question, the claim construction, in my declaration, our</p> <p>7 position on claim construction in paragraphs -- in terms</p> <p>8 of the means plus function claim that you're asking to</p> <p>9 be construed, asking the court to be construed, in</p> <p>10 paragraphs 21 through 25.</p> <p>11 I would point out that there's an introduction</p> <p>12 in paragraph 20, but the substance is in paragraph 21 to</p> <p>13 25. If we had time, which I don't believe we do now,</p> <p>14 I'd be happy to read that into the record. And that</p> <p>15 would be the answer.</p> <p>16 And that citation, that reading would be the</p> <p>17 answer to your question, as opposed to the disjointed</p> <p>18 sentences and fragments that you've been presenting</p> <p>19 today to try to put together in some kind of disjointed</p> <p>20 fashion, to prove out a tortured claim construction that</p> <p>21 the defendant, that your client is taking upon</p> <p>22 themselves.</p> <p>23 MS. LAMKIN: If we could please turn to page</p> <p>24 three of Mr. Rothschild's declaration, Exhibit 1?</p> <p>25 Thank you.</p>	<p style="text-align: right;">43</p> <p>1 I believe that I did, yes.</p> <p>2 Q So you believe that the last time you reviewed</p> <p>3 the IPR was many years ago?</p> <p>4 A Yes. That would be correct.</p> <p>5 Q Okay. In paragraph six, the last line is,</p> <p>6 "Plaintiff is presently the exclusive assignee of the</p> <p>7 Patent-in-Suit."</p> <p>8 Do you see that, sir?</p> <p>9 A I do.</p> <p>10 Q Is that a true statement?</p> <p>11 A To the best of my knowledge, that is a true</p> <p>12 statement.</p> <p>13 Q Okay. Where did you get the information in</p> <p>14 that sentence, "Plaintiff is presently the exclusive</p> <p>15 assignee of the Patent-in-Suit"?</p> <p>16 A From attorneys, from counsel.</p> <p>17 Q Did you draft that sentence in your</p> <p>18 declaration?</p> <p>19 A I did not draft it, but reviewed it and signed</p> <p>20 the declaration accordingly.</p> <p>21 Q How much of your declaration -- sorry, sir.</p> <p>22 How much of your declaration did you personally draft?</p> <p>23 A I did not draft the declaration. I reviewed</p> <p>24 the declaration.</p> <p>25 Q Your attorney drafted your declaration for</p>
<p style="text-align: right;">42</p> <p>1 BY MS. LAMKIN:</p> <p>2 Q Do you see the first line on page three of</p> <p>3 your declaration, Mr. Rothschild, where you say</p> <p>4 "Moreover, the Asserted Claims were challenged in an</p> <p>5 IPR, but the IPR was not instituted"? Did you see -- do</p> <p>6 you see that?</p> <p>7 A I thought you said page -- what paragraph,</p> <p>8 please?</p> <p>9 Q Line one --</p> <p>10 A What paragraph?</p> <p>11 Q Line one, page three, just above paragraph</p> <p>12 six.</p> <p>13 A So paragraph five.</p> <p>14 I see the statement, Ms. Lamkin. And I read</p> <p>15 it as follows: "Moreover, the Asserted Claims were</p> <p>16 challenged in an IPR, but the IPR was not instituted."</p> <p>17 Q How do you know the IPR was not instituted,</p> <p>18 Mr. Rothschild?</p> <p>19 A I was informed of such by my counsel at the</p> <p>20 time.</p> <p>21 Q When was the time?</p> <p>22 A I do not recall with specificity.</p> <p>23 Q Did you review the IPR when drafting your</p> <p>24 declaration?</p> <p>25 A I believe I did. It was many years ago. But</p>	<p style="text-align: right;">44</p> <p>1 you?</p> <p>2 A That would be correct.</p> <p>3 Q On paragraph eight -- do you see paragraph</p> <p>4 eight?</p> <p>5 A I now inform you, Ms. Lamkin, and all parties,</p> <p>6 that it's now 5:00. As we reported earlier, and as I</p> <p>7 notified my counsel to notify you with great</p> <p>8 specificity, both orally and in writing, on several</p> <p>9 occasions, unfortunately, I have a hard stop at 5:00, a</p> <p>10 previous commitment that I can't change.</p> <p>11 But I also would like to inform you,</p> <p>12 Ms. Lamkin, that I'm more than happy, before any</p> <p>13 deadlines are due, to -- if allowed by the rules, to sit</p> <p>14 down with you again to complete this deposition, if</p> <p>15 allowed.</p> <p>16 MS. LAMKIN: Our responsive brief is due</p> <p>17 tomorrow, under the court's order, Mr. Rothschild.</p> <p>18 So unless you want to sit tomorrow morning, which</p> <p>19 I'm happy to do, if you would like to sit tomorrow</p> <p>20 morning, then we can continue.</p> <p>21 THE WITNESS: I would be more than happy to</p> <p>22 talk about scheduling with counsel, not with you,</p> <p>23 Ms. Lamkin. And my counsel, I am sure, would</p> <p>24 inform you of my availability.</p> <p>25 MS. LAMKIN: You do not know whether or not</p>

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<p style="text-align: right;">45</p> <p>1 you are available tomorrow morning, Mr. Rothschild?</p> <p>2 THE WITNESS: I need to talk to counsel,</p> <p>3 Ms. Lamkin. Do you want to ask me again?</p> <p>4 MS. LAMKIN: Okay. And I just want to make</p> <p>5 sure you understand, Mr. Rothschild, that your</p> <p>6 client -- my client is being prejudiced by not</p> <p>7 being able to ask you questions about your</p> <p>8 declaration, which was not disclosed, and we will</p> <p>9 move to strike. Do you understand that, sir?</p> <p>10 THE WITNESS: I choose to get my legal advice,</p> <p>11 Ms. Lamkin, not from you. You don't represent me</p> <p>12 now or haven't represented me in the past. So I do</p> <p>13 have legal counsel that I take advice from. With</p> <p>14 all due respect, Ms. Lamkin, I don't need your</p> <p>15 legal advice. But thank you for offering it.</p> <p>16 MS. LAMKIN: Okay. This deposition is</p> <p>17 concluded.</p> <p>18 STENOGRAPHIC REPORTER: Okay. Counsel,</p> <p>19 regular time on the transcript?</p> <p>20 MS. LAMKIN: No. I need a rush of the -- I</p> <p>21 need a rush of the rough now. And then how quickly</p> <p>22 could you -- I don't want to make you work on</p> <p>23 Christmas weekend.</p> <p>24 (Off the record.)</p> <p>25 STENOGRAPHIC REPORTER: Absolutely,</p>	<p style="text-align: right;">47</p> <p>1 State of Maryland</p> <p>2 Baltimore City</p> <p>3 I, Dawn A. Hillier, a Notary Public of the State</p> <p>4 of Maryland, Baltimore City, do hereby certify that the</p> <p>5 within-named witness personally appeared before me via</p> <p>6 Zoom at the time and place herein set out, and after</p> <p>7 having been first duly sworn by me, according to law,</p> <p>8 was examined by counsel.</p> <p>9 I further certify that the examination was</p> <p>10 recorded stenographically by me and this transcript</p> <p>11 is a true record of the proceedings. I further certify</p> <p>12 that I am not of counsel to any of the parties, nor an</p> <p>13 employee of counsel, nor related to any of the parties,</p> <p>14 nor in any way interested in the outcome of the action.</p> <p>15 As witness my hand and seal this 29th day of</p> <p>16 December 2022.</p> <p>17</p> <p>18</p> <p>19 </p> <p>20 _____</p> <p>21 Dawn A. Hillier</p> <p>22</p> <p>23 My Commission Expires August 14, 2026</p> <p>24</p> <p>25</p>
<p style="text-align: right;">46</p> <p>1 absolutely.</p> <p>2 And, Mr. Palavan, did you also want a rough</p> <p>3 draft?</p> <p>4 MR. PALAVAN: Sure. Actually, no, we should</p> <p>5 be good. I don't need a rough.</p> <p>6 (The reading and signing of the deposition is</p> <p>7 not waived.)</p> <p>8 (At 5:02 p.m. the deposition was concluded.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	